IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2887 OF 2003

IN

CRIMINAL APPEAL NO. OF 2003

Uttam Bhimrao Kamble .. Applicant

versus

Yakub Gafoor Sayyed & ors. .. Respondents

...

Mr.Nitin Jamdar for the applicant.

Mr.S.S. Hardikar for the respondent no.1.

Mr.A.M. Shringarpure for the respodnent no.2.

CORAM : V.M. KANADE, J

DATED : 16th September 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned counsel for the respondents.

2. The applicant is challenging an order passed by Judicial Magistrate, First Class whereby the

complaint filed by the applicant against the respondent u/s.500 of the IPC has been dismissed. The case of the applicant original complainant was that the respondent had written a letter to the Chief Engineer, MSEB where the complainant was working and had made several false allegations against him. As a result of these allegations, a departmental enquiry was initiated against him. However, the applicant was exonerated honourably in the said departmental enquiry. Thereafter, the present complaint was filed by him. The respondent came out with a defence that he had filed a complaint in good faith to a lawful authority and therefore, he was exempted from prosecution under section 500. In view of the exception 1, 8 or 9 to section 499 of the IPC.

3. The learned counsel appearing on behalf of the applicant submitted that the trial Court has erred in not exhibiting the letter which was produced by him has not proved his allegations against the respondent. It is submitted that the trial Court had erred in coming to the conclusion that the said letter is not proved. He has taken me through the judgement and order of the trial Court. The trial Court has observed that a xerox copy of the letter written by the respondents to the Chief Engineer is filed on

record and that it did not contain the signature in original. Similarly, the complainant has not proved the contents of the said letter. Similarly, the trial Court has observed that the Chief Engineer to whom the said letter was addressed also has not been examined.

4. Under these circumstances, neither the original was produced on record nor the contents of the letter have been proved and therefore, the trial Court came to the conclusion that the alleged imputation against the applicant has not been proved. In my view, the reasoning given by the trial Court cannot be faulted. The view taken by the trial Court is not an unreasonable view. The trial Court has further observed that the onus of proving that the letter was written bonafidely to the Chief Engineer would shift only after the applicant had initially proved the said letter in question. In my view, the view taken by the trial Court is not unreasonable or perverse.

5. Leave is therefore, refused. Appeal is rejected.

V.M.KANADE, J